

## **REMARKS**

The issues outstanding in the Office Action mailed January 24, 2007, are the Requirement for Restriction, and the rejections under 35 U.S.C. §112, §102 and §103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

### **REQUIREMENT FOR RESTRICTION**

The withdrawal of Claim 19 is respectfully traversed, for the reasons of record. It is submitted that Claim 19, drawn to a method of using the product of the elected groups, should be rejoined at such time that allowability of the elected claims is indicated. See MPEP §821.04.

### **REJECTIONS UNDER 35 U.S.C. §112**

Claim 2 has been rejected under 35 U.S.C. §112. The claim has been placed in independent form, which obviates the rejection. Withdrawal of the rejection is therefore respectfully requested.

### **REJECTIONS UNDER 35 U.S.C. §102**

Claims 1-3, 9 and 11-14 have been rejected under 35 U.S.C. §102(b) over Quigley '485. Reconsideration of this rejection is respectfully requested.

It is noted that Claim 10, reciting that polymer (A) is a blend of polyamide and a polyolefin having a polyamide matrix, is not subject to this rejection. Thus, incorporation of this feature in Claim 1 renders the rejection moot, as it pertains to Claims 1, 3 and 9, which depend upon Claim 1. Moreover, incorporation of this feature in Claim 2 (now independent) and elimination of polyamide alone from Claim 11, as well as from Claims 13 and 14, renders the rejection moot in its entirety. Withdrawal thereof is respectfully requested.

## **REJECTIONS UNDER 35 U.S.C. §103**

Claims 4, 5, 15 and 16 have been rejected under 35 U.S.C. §103 over Quigley taken with Strassel '893. Reconsideration of this rejection is also respectfully requested, in view of the amendment of the claims so that they all require at least the blend of a polyamide and polyolefin having a polyamide matrix, and not polyamide alone.

Claims 6 and 17 have also been rejected under 35 U.S.C. §103 over Quigley taken with Roeber et al. '492. Again, withdrawal of this rejection is also respectfully requested in view of the amendments as above.

Claim 7 and 18 have been rejected under 35 U.S.C. §103 over Quigley taken with Hill. Again, elimination of polyamide alone from these claims renders this rejection moot.

Finally, Claim 10 has been rejected under 35 U.S.C. §103 over Quigley taken with Flepp et al. '243. Reconsideration of this rejection is respectfully requested. It is argued at page 11 of the Office Action that the adhesion-promoting layer of Flepp, made from a mixture of polyamide and a compatibilizer, would be combined with the pipe of Quigley. Applicants respectfully disagree with this analysis. The adhesion-promoting intermediate layer is disclosed as a "molding compound of polyamide" selected from the group of "copolyamides 6/12 with 55 to 80% by weight of polyamide 6 fraction, block copolyamides 6/12, polyamide 612, mixture of polyamide 6 and polyamide 12 with compatibilizer, and polyamide 610" in the Flepp patent. Patentees disclose that the "compatibilizer" can be one of the materials disclosed as impact strength modifiers, e.g., produced by grafting or copolymerizing the starting polymers with suitable reactive compounds such as maleic anhydride, (meth)acrylic acid, or glycidyl (meth)acrylate, and patentees further disclose ethylene-copolymers at column 6, lines 44-57. However, it is important to realize that this blend of polyamide and compatibilizer in Flepp is intended as an adhesion-promoting layer to bond an EVOH layer and a polyamide-based layer.

For example see column 5, lines 7-17, stating that this adhesion-promoting layer "will secure good, steady and durable adhesion both to EVOH and to polyamide 12 or polyamide 11."

Patentees continue, at column 5, lines 18-46, that the invention is directed to a composite containing an intermediate layer of a molding compound produced from ethylene/vinyl acrylate copolymers, between layers of molding compounds based on polyamides, with the adhesion promoting layer being disposed in-between the polyamide and the EVOH. Thus, it is not seen that it would be obvious to one of ordinary skill in the art to use such a layer between a *metal* unsealed inner layer, and a polyolefin outer sealing layer, or co-extrusion tie layer. Such would be necessary in order to result in a construction in accordance with the present claims, upon modifying Quigley. It is accordingly submitted that, that at least on this basis, a case of *prima facie* obviousness is not present.

Moreover, it is submitted that the two references, Quigley and Flepp, are drawn to non-analogous art areas. The test for analogous art, set forth, for example, in *In re Clay*, 966 F.2d 656, 23 USPQ2d, 1058 (Fed. Cir. 1992), asks the question of whether references are in the same area of technology, and if not, whether they address the same problem. It is clear that the references are not here in the same area of technology, the off-shore oil pipe in Quigley vs. a fuel line in a vehicle in Flepp, and moreover that they do not address the same problem, for example, transport of crude oil in the ocean, vs. transport of fuel in an automobile. Not only are the compositions of crude oil and fuel considerably different, both in terms of viscosity and chemical content, but the conditions experienced in transporting oil from under the ocean vs. fuel from a tank to a fuel injector or carburetor of an engine, are vastly different in terms of temperature and other ambient conditions. In a situation where, it might be supposed, that the references were even closer than those presently cited (*Clay, supra*), the Federal Circuit found that the references were directed to non-analogous art. In *Clay*, one reference concerned

injection of foam into a subterranean reservoir in order to flush oil to a level at which it could be pumped out, while the secondary reference involved injection of foam into an oil holding tank, to raise the oil to the level at which it could be pumped out. In finding that these references were *not* directed to analogous art, the Court held that the conditions encountered in each environment in which the foam was employed (a tank vs. underground) were different. Such as clearly the case here. Accordingly, it is submitted that this rejection should also be withdrawn.

The claims in the application are submitted to be in condition for allowance. However, if the examiner has any questions or comments, he or she is cordially invited to telephone the undersigned at the number below.

No fees are believed due with this response, however, The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,  
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